



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 30, 2017

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: PETITION FOR RECONSIDERATION, MODIFICATION, OR WAIVER
OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION AND
THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT
WC Docket Nos. 10-90, 14-58 and 14-259

Dear Secretary Dortch:

Enclosed with this transmittal letter are an original and eleven copies of the reply of the Pennsylvania Public Utility Commission and Pennsylvania Department of Community and Economic Development (Pennsylvania) to the Wireless Internet Service Providers Association's opposition to Pennsylvania's Petition for Reconsideration, Modification, or Waiver in the above-captioned matters.

Sincerely,

A handwritten signature in blue ink that reads "David E. Screven". The signature is written in a cursive style with a long, sweeping underline.

David E. Screven
Assistant Counsel

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	WC Docket No. 10-90
Connect America Fund)	WC Docket No. 14-58
)	
ETC Annual Reports and Certifications)	

**PENNSYLVANIA REPLY TO THE WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION OPPOSITION TO
PENNSYLVANIA’S PETITION
FOR RECONSIDERATION,
MODIFICATION, OR WAIVER**

The Pennsylvania Public Utility Commission (PA PUC) and the Pennsylvania Department of Community and Economic Development (PA DCED) (jointly “Pennsylvania” or “Commonwealth”) file these reply comments to the May 18, 2017 Wireless Internet Service Providers Association (WISPA) Opposition to and Comments on Petitions for Reconsideration (WISPA Comments).¹ In this reply, Pennsylvania responds only to that portion of WISPA’s opposition that addresses the Pennsylvania Petition for Reconsideration, Modification, or Waiver (Petition) filed on April 19, 2017.²

Pennsylvania welcomes the opportunity provided in this reply to redress the misinformed and misguided reservations expressed by WISPA about Pennsylvania’s proposal. For the reasons stated herein and in Pennsylvania’s Petition, the Commonwealth’s proposal supports the Federal

¹ In addition to WISPA, comments supporting the Pennsylvania Petition were filed by the wholly-owned subsidiaries of Verizon Communications Inc. (Verizon Comments).

² Pennsylvania did not file a waiver in lock-step with New York’s successful request for relief to bypass the FCC’s Connect America Fund Phase II (CAF Phase II) auction because Pennsylvania’s facts are not the same as those in New York. Rather, Pennsylvania filed for relief in the form of reconsideration, modification, or waiver to modify the CAF Phase II auction formula for Pennsylvania bids. While Pennsylvania believes that reconsideration and modification are appropriate and supported, the Commonwealth set forth the option of a waiver in the event the Commission believed that a waiver is the more appropriate path for relief. Pennsylvania Petition at 2, 14-15.

Communications Commission's (FCC or "Commission") goals of advancing broadband deployment to unserved areas of the nation using the market-based FCC auction, thus remaining cost-effective and efficient, with simplicity and objectivity, while also incentivizing state action to contribute funding to support the expansion of broadband in tandem with the FCC's CAF Phase II support. The Petition should be granted.

I. INTRODUCTION

In its Petition, Pennsylvania requested the FCC to reconsider a single aspect of the CAF Phase II auction formula announced in the *CAF Phase II Auction Rules Order*³ to add a negative weight to reflect additional resources brought to the auction through the state. The purpose of the modification is to incentivize the Commonwealth to bring additional financial resources harnessed through state action to the auction in order to allow Pennsylvania the opportunity to retain for use within the designated census blocks the model-based CAF Phase II support designed for Pennsylvania but declined by Verizon Pennsylvania LLC (Verizon PA) and Verizon North LLC (Verizon North) (collectively Verizon).

II. WISPA's POSITION

Although not identified in its pleading, WISPA is an organization "consisting of wireless Internet service providers, municipal wireless internet providers, electric and telephone cooperative wireless Internet providers, equipment manufacturers, service vendors and other interested parties."⁴ WISPA claims that its members deliver "broadband Internet to over 3 million users via 3000+ Internet Service Providers (ISPs) that serve both residential and business customers, often in exclusively rural areas."⁵ Further, WISPA asserts that a goal of the

³ *Connect America Fund et al., Report and Order on Reconsideration*, WC Docket Nos. 10-90 and 14-58 at FCC 17-12 (released March 2, 2017) (*CAF Phase II Auction Rules Order*).

⁴ <http://www.wispa.org/About-Us> (accessed 5/23/17).

⁵ *Id.*

association is to “[e]ncourage Congress and the FCC to write laws that support the survival and success of **community-based** wireless Internet service providers (WISPs).”⁶

WISPA contends that the Commonwealth’s proposal is a “flimsy and ill-conceived effort to confer a preference for bids” in Pennsylvania because it includes “unspecified ‘complementary resources’” in a “convoluted and transparently self-aggrandizing plan” that “brazenly seeks to appropriate finite federal support dollars . . . to benefit Pennsylvania disproportionately, despite the Commonwealth’s history of corporate favoritism.”⁷

Apparently defining “corporate favoritism” as Pennsylvania’s imposition of a statutory ubiquitous broadband deployment obligation on *incumbent local exchange carriers (ILECs) only*, WISPA first concludes that this statutory mandate “failed, and now [the Commonwealth] asks the Commission to cover its tracks.”⁸ As WISPA argues, without the slightest foundation, “[s]tated another way, policies that provided support and incentives only to ILECs did not accomplish the Commonwealth’s objectives” and “Pennsylvania was apparently caught off-guard.”⁹

WISPA next contends that Pennsylvania’s proposal is “fatally flawed from a factual perspective” because the Commonwealth has no dedicated broadband fund.¹⁰ Comparing the Pennsylvania Petition to the waiver granted by this Commission to the state of New York, WISPA characterizes the relief Pennsylvania seeks as based on “unsourced and unquantified ‘complementary resources’” that are a “far cry” from the facts underlying New York, concluding that “it is not even clear that Pennsylvania has or will have authority to provide support to non-ILECs.”¹¹

⁶ *Id.* (emphasis added).

⁷ WISPA Comments at 1, 9-10.

⁸ *Id.* at 10.

⁹ *Id.* at 10-11 (footnote omitted).

¹⁰ *Id.* at 11.

¹¹ *Id.* at 11-12 (footnote omitted).

Finally, WISPA argues that Pennsylvania's Petition should be rejected because it diverts the funds designed for, but declined by, Verizon for use in Pennsylvania contravening what WISPA claims was a policy established by the Commission in 2011 to hold a nationwide auction.¹² WISPA asserts in summary that Pennsylvania has no support available, has not agreed to the FCC's eligibility criteria, has established no performance criteria, and has adopted no auction rules.

III. PENNSYLVANIA'S REPLY COMMENTS

WISPA's opposition to Pennsylvania's proposal is based on a fundamental misapprehension of both Pennsylvania's proposal and its extensive regulatory history mandating broadband deployment within the Commonwealth. Contrary to WISPA's description, Pennsylvania's proposal is a simple, objective, technologically-neutral vehicle available to all potential bidders that is cost-effective, and efficient.

The premise underlying Pennsylvania's Petition is simple: if Pennsylvania brings additional financial resources to the auction, those resources should be acknowledged in the FCC's evaluation of bids. Pennsylvania has proposed no state auction, no eligibility criteria, and no performance criteria *because none are necessary*. With the exception of the single modification to the formula to recognize additional state-harnessed resources identified by the bidder in the bid,¹³ Pennsylvania's proposal adheres to the FCC's auction process.¹⁴ Thus, the

¹² *Id.* at 12.

¹³ *See, e.g.*, Pennsylvania Petition at 12-13 ("additional resources from the state are identified and secured for use in Pennsylvania prior to the auction"; "the bidder would be obligated to identify those additional resources in order for it to be reflected in the scoring process").

¹⁴ *See, e.g.*, Pennsylvania Petition at 2 ("the auction formula will continue to abide by the Commission's auction process"); at 5 ("Pennsylvania proposes one modification to the FCC's final auction formula that will otherwise abide by all parameters of the FCC's auction"); at 13 ("to receive any state resources geared towards broadband deployment, the applicant would be required to commit to the FCC's CAF II program parameters, including the Commission's process and all conditions. Support will have to be used in the same eligible census blocks in Verizon's territory to which the CAF Phase II funding was originally offered."); at 20 ("A Pennsylvania-specific weight to acknowledge complementary support can be recognized through a simple modification of the formula. In all other respects, the FCC's auction parameters and conditions will apply.").

Pennsylvania proposal is not convoluted and does not require a state process like that implemented in New York. If no additional resources are provided, the factor is zero.¹⁵

Pennsylvania benefits only to the extent that it contributes. Thus, there is no “self-aggrandizement.” Pennsylvania’s proposal incentivizes states to contribute additional resources in adherence to long-standing Commission objectives.¹⁶

Contrary to WISPA’s mischaracterization, Pennsylvania’s currently-available resources are laid out in the Petition, and Pennsylvania continues actively to identify additional resources, an effort that would be incentivized by the Commission’s grant of the Petition. Pennsylvania was frank in its acknowledgement that it does not have a \$500 million dedicated broadband fund like New York. However, not unlike the economic development agency in New York charged with disbursing that state’s broadband funds, the PA DCED is the executive economic development branch of Pennsylvania government whose mission includes administering state grants and other financial assistance to qualified applicants who submit proposals to foster economic development, including broadband infrastructure. As identified by Pennsylvania, many existing economic development programs support initiatives through which complementary funding for broadband buildout may be available.¹⁷

The PA DCED programs enable any potential broadband provider, including WISPA’s members, to reach out to and partner with applicants, such as county and municipal governmental entities or local economic or industrial development councils, to obtain state resources to

¹⁵ See Pennsylvania Petition at 5 (“As designed, the modest modification is operative only if there is a complementary commitment through the state.”).

¹⁶ See, e.g., Pennsylvania Petition at 19 (“This proposal is consistent with the Commission’s long-standing goal of encouraging state support for broadband deployment.”).

¹⁷ See Pennsylvania Petition at 8-11. See also <http://dced.pa.gov/programs/business-in-our-sites-grants-and-loans-bos/>; <http://dced.pa.gov/programs/keystone-communities-program-kcp/>; <http://dced.pa.gov/programs/local-share-account-lsa-fayette-county/>; <http://dced.pa.gov/programs/local-share-account-lsa-luzerne-county/>; <http://dced.pa.gov/programs/local-share-account-lsa-monroe-county/>; <http://dced.pa.gov/programs/local-share-account-lsa-montgomery-county/>; <http://dced.pa.gov/programs/local-share-account-lsa-washington-county/>; <http://dced.pa.gov/programs/fay-penn-program/>; <http://dced.pa.gov/programs/pennsylvania-first-program-pa-first/>.

complement a bid.¹⁸ The PA DCED's extensive work with private and public entities focuses resources where the need to spur economic development is vital. Pennsylvania's proposal is designed to encourage *precisely* the granular bottom-up *community-based* active participation by *all* interested parties, *including* the *non-ILEC* wireless providers that WISPA claims to represent in a manner consistent with its membership and stated policy goals.

Given the PA DCED's community-based economic development with local agencies and businesses, Pennsylvania welcomes WISPA's exploration of Pennsylvania resources to help advance broadband availability at modern speeds in the Commonwealth. Indeed, like the FCC, Pennsylvania has also long supported technological neutrality, for example authorizing joint ventures with unregulated entities and prohibiting restrictions on technology.¹⁹ WISPA will likely find that submitting a bid to serve Pennsylvania's underserved rural areas where Verizon declined support may be more economically feasible with Pennsylvania's modification than without.

WISPA's accusation of "corporate favoritism" likewise reflects a misunderstanding specifically of Pennsylvania's historic regulation of ILECs' broadband deployment and generally of Pennsylvania state law. Pennsylvania's long-standing dedication to ubiquitous broadband deployment was only achieved as a result of a legislative mandate imposed *on ILECs only* when, in 1993, the Pennsylvania General Assembly mandated that Pennsylvania ILECs commence mandatory broadband deployment balanced among urban, suburban, and rural areas. This obligation was imposed without exception and *without regard for the economic case* for

¹⁸ The ability to join with local entities is exemplified by the May 15, 2017 letter supporting the Pennsylvania Petition filed by the County Commissioners Association of Pennsylvania, non-profit, non-partisan association representing the Commonwealth's 67 counties that is capable of working with parties interested in obtaining grants to fulfill economic development needs, including access to adequate broadband service in rural, underserved areas. Pennsylvania notes that it is also home to a number of electric cooperatives, similar to WISPA members, which may also have an interest in competing for Pennsylvania resources to enhance potential business plans and bids to expand broadband in their territories, many of which overlap with Verizon's declined census blocks.

¹⁹ See 66 Pa. C.S. § 3014(n)(prohibiting the PA PUC from requiring specific technology or prohibiting joint ventures). The PA PUC has also previously held that wireless technologies can be used to satisfy ILECs' broadband commitments. See *Petition of David K. Ebersole, Jr. and the Office of Consumer Advocate for a Declaratory Order*, Docket No. P-2012-2323362 (Tentative Order entered December 26, 2012; Final Order entered February 28, 2013).

deployment. In exchange, ILECs were offered freedom from traditional rate base/rate of return regulation through an alternative form of regulation that was tied to inflation but still subject to regulatory review, including the traditional “just and reasonable” rate standard.

Pennsylvania’s broadband deployment was an exemplary success. When updated through further statutory enactment in 2004, the Commonwealth’s initiative was described as the most aggressive rural broadband deployment program of its kind in the nation.²⁰ All regulated ILECs reported ubiquitous broadband availability as of December 31, 2015. As also acknowledged, however, Pennsylvania’s mandatory minimum broadband speeds have not kept pace with technology, requiring a download speed of only 1.544 Mbps. It is for this reason that Pennsylvania has substantial *underserved* areas by the FCC’s modern delivery standards and remains eligible for CAF Phase II funding.²¹

This mandatory ubiquitous broadband expansion was financed through ratepayer and ILEC funds achieved through the PA PUC’s regulatory authority over legacy ILECs consistent with their carrier of last resort (COLR) obligations in Pennsylvania, an obligation no other provider has in Pennsylvania. Under state law, the PA PUC does not exert traditional public utility regulation over the wireless and internet-based community, including WISPA’s members, as it does over ILECs.²² These other communications providers may deploy broadband networks and services in Pennsylvania on the basis of their individual business case assessments and economic analyses and without accrual of any COLR obligations. State law did not prohibit *non-ILECs* like WISPA’s members from partnering with Pennsylvania ILECs in meeting broadband commitments, but these providers were not compelled under Pennsylvania state law to deploy broadband where there was no economic case to do so.

²⁰ See Pennsylvania Petition at 7.

²¹ See Pennsylvania Petition at 6-11.

²² See 66 Pa. C.S. §§ 102(1)(vi) and 102(2)(iv) (wireless); 73 P.S. §§ 2251.1-2251.6 (VoIP Freedom Act).

What WISPA refers to as misdirected corporate favoritism, the statutory option to provide ILECs the *incentive* of alternative regulation over traditional rate base/rate of return, was and still is wholly inapplicable to providers like WISPA's members. These providers enjoyed, and continue to enjoy, substantial freedom from state regulation, including the freedom to extend broadband access only in profitable, niche markets where investment decisions are based upon sound business plans and not a universal service obligation. WISPA's allegation that the Commonwealth's historic broadband initiative was misdirected corporate favoritism that failed lacks any legal or factual foundation.

Finally, WISPA's claim that Pennsylvania's proposal diverts funding away from other states misrepresents Pennsylvania's proposal and ignores the derivation of the CAF Phase II support that Verizon declined. That support was objectively designed, model-based support designated for those high cost areas in Pennsylvania served by Verizon where support was needed. Verizon's private decision to decline that support did not obviate its need.

Designed and offered on a state-by-state census block basis, the PA PUC reasonably expected that declined funds would remain available within the state for auction to another provider. Despite its attempt to construe prior Commission orders differently, every Commission pronouncement relied upon by WISPA to support its interpretation that declined funds would automatically revert to a nationwide auction is dispelled by these sources' consistent reference to the *states*.²³ The diversion is the notion that model-based state support would be subject to an auction out-of-state, not conversely as WISPA argues. While Pennsylvania does not dispute that approach, the Commonwealth seeks just one modification to recognize the state's addition of resources in harmony with the FCC's goals.

²³ See WISPA Comments at 11 n.56 (addressing opportunities for eligible census blocks for each *state* a carrier serves and offers made on a *state-by-state* basis).

Furthermore, no other state or party opposed Pennsylvania's proposal. Ultimately, as stated by Pennsylvania, the proposal had the support of the National Association of Regulatory Utility Commissioners, which recognized by resolution that the model-based support declined by price-cap carriers in state-specific census blocks should remain within the state so that the bidders and states affected by a price-cap carrier's refusal of model-based support will know that the support will remain there and negative universal service impacts will be avoided.²⁴ Verizon as well supports the Pennsylvania Petition, noting that without the modification support is directed away from high cost areas that are, relatively, "lower cost." And no other state stands to lose its current state-designed support if Pennsylvania's proposal is granted.

IV. CONCLUSION

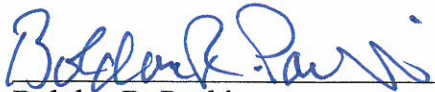
Pennsylvania's proposal abides by the principles consistently enunciated by the FCC starting with the *USF/ICC Transformation Order* through the *CAF Phase II Auction Rules Order*. Pennsylvania's proposed modification expands the reach of the CAF II support without burdening federal support or consumers. It allows the state and its municipal and private entities to maximize funding available for economic development and broadband infrastructure while offering state assistance to *any* provider to help develop a business case. It is an objective addition to an objective process that incentivizes the state to coordinate state action and funding. In short, by bringing additional resources to the FCC's bid process, Pennsylvania provides all broadband providers the opportunity to serve an area for less than the reserve price, satisfying the FCC's goals of cost-effectiveness and efficiency.

On the other hand, without relief, Pennsylvania's rural consumers in Verizon-declined census blocks are at risk of losing the full and current federal public support designed to provide them modern broadband service entirely because of Verizon's private business decision. The

²⁴ See Pennsylvania Petition at 16-17.

FCC can avoid this outcome by granting Pennsylvania's Petition. Such action comes with no risk to the Commission. If Pennsylvania fails to harness resources through state action, the grant of relief will have no effect. The Pennsylvania Petition should be approved.

Respectfully submitted,

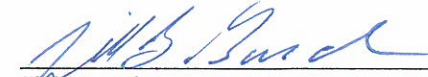


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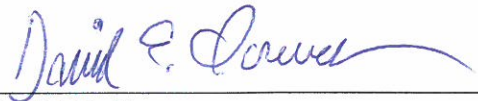
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CERTIFICATE OF SERVICE

I, David E. Screven, hereby certify that on this 30th day of May, 2017, a copy of the foregoing "Pennsylvania Public Utility Commission and Pennsylvania Department of Economic Development's Reply to WISPA's Opposition to and Comments on Petitions for Reconsideration," was sent by first-class, postage prepaid mail to the following:

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